

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SERGIO A. TORRES
2089 Cooper Drive
Santa Rosa, CA 95404

Registered Nurse License No. 552053

Respondent

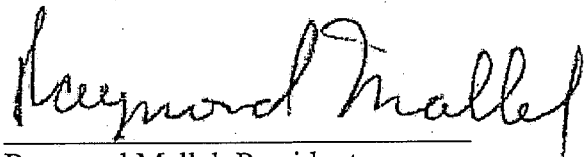
Case No. 2012- 208

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 27, 2012.**

IT IS SO ORDERED **August 28, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. 2012-208

12 **SERGIO A. TORRES**
13 **2089 Cooper Drive**
Santa Rosa, CA 95404

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Registered Nurse License No. 552053**

15 Respondent.

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant), is the Interim Executive Officer of the
24 Board of Registered Nursing (Board), Department of Consumer Affairs. She brought this action
25 solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney
26 General of the State of California, by Leslie E. Brast, Deputy Attorney General.

27 2. Respondent Sergio A. Torres (Respondent) is represented in this proceeding by
28 attorney Marc G. Cowden of Galloway, Lucchese, Everson & Picchi, whose address is 1676

1 North California Boulevard, Suite 500, Walnut Creek, CA 94596.

2 3. On or about February 17, 1999, the Board issued Registered Nurse License No.
3 552053 to Respondent. The license was in full force and effect at all times relevant to the charges
4 brought in Accusation No. 2012-208 and will expire on December 31, 2012, unless renewed.

5 JURISDICTION

6 4. Accusation No. 2012-208 was filed before the Board and is currently pending against
7 Respondent. The Accusation and all other statutorily required documents were properly served
8 on Respondent on October 5, 2011. Respondent timely filed his Notice of Defense contesting the
9 Accusation.

10 5. A copy of Accusation No. 2012-208 is attached as Exhibit A and incorporated herein
11 by reference.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 2012-208. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

26 CULPABILITY

27 9. Respondent admits the truth of each and every charge and allegation in Accusation
28 No. 2012-208.

10. Respondent agrees that his Registered Nurse License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondent Sergio A. Torres has never been the subject of any disciplinary action. He admitted responsibility at an early stage in the proceedings and has presented as courteous, contrite, and cooperative. He remains employed at the hospital at which the incident occurred that gave rise to the Accusation. Respondent takes full responsibility for his mistakes and submitted recent, positive performance evaluations as well as several letters from the hospital HR Director, President/CEO, and RN Director of Surgical Services attesting that he is well-regarded as a skillful and conscientious nurse.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and Board staff may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 552053 issued to Respondent Sergio A. Torres (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license

1 status with the Board, including during any period of suspension.

2 Upon successful completion of probation, Respondent's license shall be fully restored.

3 **3. Report in Person.** Respondent, during the period of probation, shall appear in
4 person at interviews/meetings as directed by the Board or its designated representatives.

5 **4. Residency, Practice, or Licensure Outside of State.** Periods of residency or
6 practice as a registered nurse outside of California shall not apply toward a reduction of this
7 probation time period. Respondent's probation is tolled, if and when he resides outside of
8 California. Respondent must provide written notice to the Board within 15 days of any change of
9 residency or practice outside the state, and within 30 days prior to re-establishing residency or
10 returning to practice in this state.

11 Respondent shall provide a list of all states and territories where he has ever been licensed
12 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
13 information regarding the status of each license and any changes in such license status during the
14 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
15 license during the term of probation.

16 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
17 or cause to be submitted such written reports/declarations and verification of actions under
18 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
19 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
20 Respondent shall immediately execute all release of information forms as may be required by the
21 Board or its representatives.

22 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
23 state and territory in which he has a registered nurse license.

24 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
25 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
26 6 consecutive months or as determined by the Board.

27 For purposes of compliance with the section, "engage in the practice of registered nursing"
28 may include, when approved by the Board, volunteer work as a registered nurse, or work in any

1 non-direct patient care position that requires licensure as a registered nurse.

2 The Board may require that advanced practice nurses engage in advanced practice nursing
3 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

4 If Respondent has not complied with this condition during the probationary term, and
5 Respondent has presented sufficient documentation of his good faith efforts to comply with this
6 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
7 extension of Respondent's probation period up to one year without further hearing in order to
8 comply with this condition. During the one year extension, all original conditions of probation
9 shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
11 prior approval from the Board before commencing or continuing any employment, paid or
12 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to his employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within seventy-two
18 (72) hours after he obtains any nursing or other health care related employment. Respondent
19 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
20 regardless of cause, from any nursing, or other health care related employment with a full
21 explanation of the circumstances surrounding the termination or separation.

22 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
23 Respondent's level of supervision and/or collaboration before commencing or continuing any
24 employment as a registered nurse, or education and training that includes patient care.

25 Respondent shall practice only under the direct supervision of a registered nurse in good
26 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
27 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
28 approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

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Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$4,279.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation.** If Respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary

1 period shall automatically be extended and shall not expire until the accusation or petition has
2 been acted upon by the Board.

3 13. **License Surrender.** During Respondent's term of probation, if he ceases practicing
4 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
5 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
6 Respondent's request and to exercise its discretion whether to grant the request, or to take any
7 other action deemed appropriate and reasonable under the circumstances, without further hearing.
8 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
9 subject to the conditions of probation.

10 Surrender of Respondent's license shall be considered a disciplinary action and shall
11 become a part of Respondent's license history with the Board. A registered nurse whose license
12 has been surrendered may petition the Board for reinstatement no sooner than the following
13 minimum periods from the effective date of the disciplinary decision:

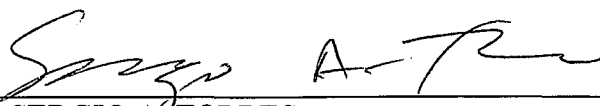
14 (1) Two years for reinstatement of a license that was surrendered for any reason other
15 than a mental or physical illness; or

16 (2) One year for a license surrendered for a mental or physical illness.

17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Marc G. Cowden. I understand the stipulation and the effect it will
20 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary
21 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
22 of the Board of Registered Nursing.

23
24 DATED: 4/16/12


25 SERGIO A. TORRES
Respondent

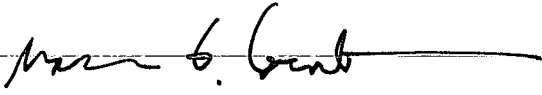
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1 I have read and fully discussed with Respondent Sergio A. Torres the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: 4/20/12


MARC G. COWDEN
Attorney for Respondent

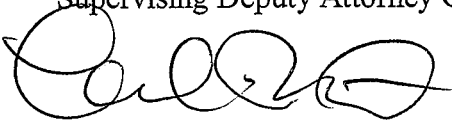
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
10 Affairs.

11 Dated: April 30, 2012

Respectfully submitted,

12
13 KAMALA D. HARRIS
Attorney General of California
14 FRANK H. PACOE
Supervising Deputy Attorney General

15 
16 LESLIE E. BRAST
17 Deputy Attorney General
Attorneys for Complainant
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Stipulation.rtf
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Exhibit A

Accusation No. 2012-208

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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Attorneys for Complainant

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9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2012-208

12 **SERGIO A. TORRES**
13 **2089 Cooper Drive**
14 **Santa Rosa, CA 95404**

A C C U S A T I O N

14 **Registered Nurse License No. 552053**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about February 17, 1999, the Board issued Registered Nurse License Number
23 552053 to Sergio A. Torres (Respondent). The license was in full force and effect at all times
24 relevant to the charges brought herein and will expire on December 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 2761, subdivision (a), authorizes the Board to take disciplinary action against a certified or licensed nurse for unprofessional conduct.

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

8. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), for unprofessional conduct, as follows:

9. On or about April 6, 2010, while working as an operating room nurse at Sonoma Valley Hospital (SVH), in Sonoma, California, Respondent undertook the performance of a practical joke on a surgical patient, CR,¹ who was a friend and colleague of Respondent's and other members of the operating room team. CR was an outpatient for arthroscopic knee surgery. He was also employed at SVH as an operating room surgical technician. The prank involved painting CR's fingernails, dressing him in panties and a peri-pad, and photographing him wearing cone-shaped urine strainers on his chest while he was under sedation.

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¹ Initials are used in place of the patient's full name in order to protect his privacy.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 552053, issued to Sergio A. Torres;
2. Ordering Sergio A. Torres to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: October 5, 2011

for *Stacie Bern*
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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